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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LEONARD C. ADAMS, et al.)	Case No. 3:11-cv-00210-RCJ-VPC
)	
Plaintiffs,)	
)	
v.)	
)	
COMPASS PARTNERS, LLC, et al.,)	
)	
Defendants.)	
)	

**ORDER DISMISSING THE NON-VOTING AND NON-SETTLING
INDIVIDUAL DIRECT LENDERS' CLAIMS WITH PREJUDICE**

On July 24, 2018 this Court entered an Agreed Order Approving Settling Agreement (the "Settlement Order") with respect to a settlement reached by 851 Individual Direct Lender Plaintiffs (the "Settling Plaintiffs"). (ECF No. 275.) At the time, there were five Plaintiffs who had voted against the settlement (the "Non-Settling Plaintiffs"), and 78 Plaintiffs who had not voted for or against the settlement (the "Non-Voting Plaintiffs"). (*Id.*, para. 8-10.) At paragraph 14 of the Settlement Order, the Court stated:

14. Attorneys for the Settling Plaintiffs shall promptly serve a copy of this Order on all Non-Settling and Non-Voting Plaintiffs, and remind those plaintiffs that, if they desire to continue to pursue their Causes of Action against the Compass Defendants and Mark Olson, they must appear through new counsel or in *pro per* at the status conference currently set to occur at the Bruce R. Thompson Federal Courthouse, Courtroom 3, 400 S. Virginia Street, Reno, Nevada, 85901, on August 7, 2018, at 10:00 a.m.

1 (*Id.*, para. 14.)

2 On Tuesday, August 7, 2018, at 10:00 a.m. the Court convened the status conference
3 referenced in the Settlement Order. Present in the courtroom was attorney Daniel T. Hayward of
4 Laxalt & Nomura, Ltd., on behalf of Defendants David Blatt, Jay Cohen, Leonard Mezei, Ron
5 Friedman, Compass Financial Partners, LLC, Compass FP Corp., Compass Partners, LLC,
6 Compass USA GP, LLC, Compass USA Holding, LLC, Compass USA, LP, Compass USA SPE,
7 LLC, Economic Growth Group, Inc., and Repotex, Inc. (collectively, the “Compass
8 Defendants”). Mr. Hayward advised that timely notice of the contents of paragraph 14 of the
9 Settlement Order was given by Plaintiffs’ counsel to the Non-Voting and Non-Settling
10 Defendants. None of the 78 Non-Voting Plaintiffs and five Non-Settling Plaintiffs were present
11 in the Courtroom, nor did they make arrangements to appear telephonically or otherwise respond
12 to paragraph 14 of the Court’s July 24, 2018 Settlement Order.
13

14
15 Defense counsel orally moved the Court to dismiss the Non-Voting and Non-Settling
16 Plaintiffs’ remaining claims pursuant to Federal Rule of Civil Procedure Rule 41(b). Rule 41(b)
17 grants district courts the authority to *sua sponte* dismiss actions for failure to prosecute or failure
18 to comply with court orders. *See Link v. Wabash R.R.*, 370 U.S. 626, 629–31, 82 S.Ct. 1386, 8
19 L.Ed.2d 734 (1962) (“expressly recogniz[ing]” the district court’s authority to dismiss a
20 plaintiff’s action with prejudice because of his failure to prosecute, finding that “[t]he power to
21 invoke this sanction is necessary in order to prevent undue delays in the disposition of pending
22 cases and to avoid congestion in the calendars of District Courts.”); *Pagtalunan v. Galaza*, 291
23 F.3d 639, 640–43 (9th Cir.2002) (affirming district court’s *sua sponte* dismissal of habeas
24 petition with prejudice “for failure to prosecute and failure to comply with a court order”).
25 However, because “dismissal is a harsh penalty, ... it should only be imposed in extreme
26 circumstances.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir.1992) (citing *Hamilton Copper*
27 *& Steel Corp. v. Primary Steel, Inc.*, 898 F.2d 1428, 1429 (9th Cir.1990)).
28

1 The Court must weigh five factors In considering whether to dismiss an action for failure
2 to comply with a court order: “(1) the public's interest in expeditious resolution of litigation; (2)
3 the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the
4 availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on
5 their merits.” *See Pagtalunan v. Galaza*, 291 F.3d at 642 (citing *Ferdik*, 963 F.2d at 1260–61).

6 The Court finds that each of the five factors weigh in favor of dismissal.
7

8 **1. The public's interest in expeditious resolution of litigation.**

9 This case was originally filed on March 21, 2011. (ECF No. 1.) The Compass
10 Defendants and Plaintiffs, through their attorneys and representatives, have been engaged in
11 court-facilitated settlement discussions since at least January 2014. (ECF No. 2356 in the 892
12 Case; *see also* ECF No. 217 in the 210 Case.) At some point, this litigation must be resolved.
13 The Non-Voting and Non-Settling Plaintiffs have elected not to participate in the settlement,
14 which is of course their right. However, they have further elected not to appear at the August 7,
15 2018 status conference, as they were required to do by paragraph 14 of the Settlement Order if
16 they wished to continue to pursue their claims. The Court is not inclined to further extend the
17 pre-trial deadlines in order to inquire, again, whether any remaining Plaintiffs intend to proceed.
18

19 The Court notes that pursuant to paragraph 13 of the Settlement Order, the Non-Voting
20 and Non-Settling Plaintiffs still have the option of voting to approve the settlement prior to the
21 Effective Date of the settlement, in which case each such Plaintiff will be deemed a “Settling
22 Plaintiff” under the Order and be entitled to participate in and receive their *pro rata* interest in
23 the settlement. (*See* ECF No. 275, para. 13.)
24

25 **2. The Court's need to manage its docket.**

26 For the same reasons articulated above, this factor favors dismissal under Rule 41(b). The
27 trial of this matter could involve the presentation of evidence regarding the Compass
28 Defendants’ servicing of multiple fractionalized loans, and could consume several weeks. The

1 Compass Defendants and Defendant Mark Olson are faced with a pending dispositive motion
2 due date of August 31, 2018, and a joint pre-trial order due date of September 28, 2018.
3 However, prior to the August 7, 2018 status conference they could not be certain which Plaintiffs
4 intended to proceed with their claims, which loans remain at issue, or what the present-day
5 calculation of the Plaintiffs' damages may be. The Court's need to manage its docket weighs in
6 favor of dismissal.
7

8 **3. The risk of prejudice to the defendants.**

9 As set forth above, the Compass Defendants and Defendant Mark Olson are faced with a
10 pending dispositive motion due date of August 31, 2018, and a joint pre-trial order due date of
11 September 28, 2018. Yet as of the morning of the August 7, 2018 status conference they
12 remained uncertain which Plaintiffs intended to proceed with their claims, which loans remain at
13 issue, or the nature of the remaining Plaintiffs' damages calculations. The Compass Defendants
14 and Defendant Mark Olson faced the prospect of attempting to prepare complex motions for
15 summary judgment, and voluminous joint pre-trial order submissions, without an understanding
16 of which of 83 possible Non-Voting and Non-Settling Plaintiffs even intended actively pursue
17 claims against them. This factor also favors dismissal.
18

19 **4. The availability of less drastic alternatives.**

20 The Non-Voting Plaintiffs had ample opportunity to declare whether they intended to
21 settle or proceed with their claims. (See Settlement Order, ECF No. 275, at para. 11.) Both the
22 Non-Voting and Non-Settling Plaintiffs were also notified of their obligation to appear at the
23 August 7, 2018 status conference and advise whether they wished to continue to pursue their
24 claims. None appeared. The Court has no reason to expect that still further notices would yield a
25 different result. Meanwhile, the Court, the Compass Defendants, and Defendant Mark Olson are
26 entitled to finality. This factor favors dismissal.
27
28

1 **5. The public policy favoring disposition of cases on their merits.**

2 While public policy favors adjudication on the merits, this factor ceases to militate
3 against dismissal when the parties whose claims are to be involuntarily dismissed have
4 demonstrated no desire or intention to proceed. Accordingly, this factor favors dismissal.
5

6 **6. The Non-Voting and Non-Settling Plaintiffs' non-appearance is consistent with
7 an intention not to proceed.**

8 Finally, the Court further notes that some or all of the Non-Voting or Non-Settling
9 Plaintiffs may have decided, upon review of paragraph 14 of the July 24, 2018 Settlement Order,
10 that they affirmatively do not wish to proceed with their claims. To the extent that is indeed the
11 case, such Plaintiffs have not failed to comply with the Court's Order, but rather have implicitly
12 advised the Court and the remaining Defendants through their non-appearance at the August 7,
13 2018 status conference that they do not wish to proceed, and that they consent to dismissal of
14 their claims. (*See* ECF No. 275, para. 14.)

15 Based on the Court's finding that each of the five *Pagtalunan* factors favors dismissal, **IT**
16 **IS HEREBY ORDERED** that:

17 1. the Compass Defendants' oral motion to dismiss the Non-Voting and Non-
18 Settling Plaintiffs' remaining claims pursuant to Federal Rule of Civil Procedure 41(b) is hereby
19 GRANTED;
20

21 2. each of the remaining 78 Non-Voting Plaintiffs' claims against the Compass
22 Defendants and Defendant Mark Olson, and each of the five Non-Settling Plaintiffs' claims
23 against the Compass Defendants and Defendant Mark Olson, are hereby DISMISSED WITH
24 PREJUDICE pursuant to Federal Rule of Civil Procedure 41(b) based on the Non-Voting and
25 Non-Settling Plaintiffs' failure to comply with the Court's July 24, 2018 Settlement Order (ECF
26 No. 275);
27
28

1 3. in the alternative, to the extent some or all of the Non-Voting or Non-Settling
2 Plaintiffs decided, upon review of paragraph 14 of the Settlement Agreement, that they do not
3 wish to proceed to pursue their claims in this case, the Court concludes that they have indicated
4 such an intention through their non-appearance at the August 7, 2018 status conference and
5 accordingly each of their claims against the Compass Defendants and Defendant Mark Olson is
6 hereby DISMISSED WITH PREJUDICE pursuant to Federal Rule of Civil Procedure 41(b); and
7

8 4. this is a final appealable order which fully and finally resolves the remaining
9 claims in this case by all remaining Plaintiffs against all remaining Defendants, subject only to
10 the terms of the Settlement Order (ECF No. 275), and the Court's exercise of *in rem* jurisdiction
11 to hear and rule upon motions concerning the Protective Advance Loans (*Id.*, para. 30);
12

13 5. for avoidance of doubt, the Court further states:
14

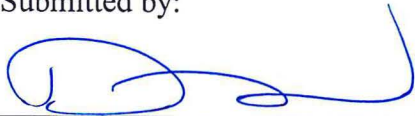
15 a. pursuant to paragraph 13 of the Settlement Order, the Non-Voting and
16 Non-Settling Plaintiffs still have the option of voting to approve the settlement prior to
17 the Effective Date of the settlement, in which case each such Plaintiff will be deemed a
18 "Settling Plaintiff" under the Order and be entitled to participate in and receive their *pro*
19 *rata* interest in the settlement. (*See* ECF No. 275, para. 13.)

20 b. this order has no effect on the Settling Plaintiffs as described in the
21 Settlement Order, the disposition of whose claims are addressed in the Settlement Order.
22 (ECF No. 275.)

23 **IT IS SO ORDERED** this 9th day of August, 2018.

24
25 
26 _____
27 UNITED STATES DISTRICT COURT JUDGE
28

Submitted by:



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